

Case Number: 2013-02176

Filed: 6/7/2013 11:06:17 AM

7

Law Offices of Peter G. Macaluso
Peter G. Macaluso #215730
7311 Greenhaven Drive, Suite 100
Sacramento, CA 95831
916-392-6591
916-392-6590 Facsimile

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA
SACRAMENTO

IN THE MATTER OF

CASE NO. 12-28102-B-13J

EMERSON, RALPH W.

ADV. NO: 13-02176-B

EMERSON, SUZANNE O.

Debtors

EMERSON, RALPH W.
EMERSON, SUZANNE O.

COMPLAINT

Plaintiffs,

v.

EMOVATIONS, INC.

Defendant

Plaintiffs, Ralph and Suzanne Emerson, by and through their
attorney of record, Peter G. Macaluso, allege as follows;

I. NATURE OF THE CASE

1. Plaintiffs bring this action against defendant
Emovations, Incorporated (hereafter "Defendant" or "Emovations")
under; (1) Declaratory Relief, moving the Court in Objection to
Proof of Claim #17, of Emovations, Inc., based on: (i) the proof
of claim has not substantiated properly, (ii) the proof of claim
has not been substantiated procedurally, and/or (iii) the proof of

1 claim does not support an actual claim for \$750,000.00, as owed to
2 Defendant by Plaintiffs.

3 **II. JURISDICTION AND VENUE**

4 2. This Court has jurisdiction over this contested matter
5 under 28 U.S.C. 1334(a) and 157(a) and the Standing Order of the
6 United States District Court dated July 10, 1984 referring all
7 bankruptcy cases to the Bankruptcy Court.

8 3. This matter is a core proceeding within the meaning of
9 28 U.S.C. 157(b) (2) (o). Jurisdiction of this Court over the
10 instant adversary proceeding is based upon 28 U.S.C. 157, 1344,
11 1335, and 1397.

12 4. This proceeding arises in and relates to the Chapter 13
13 bankruptcy case of 12-28102-B-13J, Plaintiffs filed on April 26,
14 2012.

15 5. This Court possesses personal jurisdiction over each
16 Defendant based on each defendant's presence and/or transaction of
17 business and/or contacts within this District.

18 6. Venue is proper in this District in that defendant is
19 authorized to do business in California, or at all times relevant
20 herein have regularly conducted business within this District.

21 **III. PARTIES**

22 7. Plaintiffs are the debtors in the above listed Chapter
23 13 case, 12-28102-B-13J.

24 8. Emovations is an "Active" "Domestic Corporation",
25 incorporated in "Nevada", beginning November 12, 2010, and had
26 entered an appearance in the underlying chapter 13 case, by and
27 through Robert K. Stephenson, who filed and signed as "Chief
28

1 Financial Officer", by filing a proof of claim, claim #17 in the
2 instant Chapter 13 case, #12-28102-B-13J (hereafter "Claim #17").

3 9. The proof of claim at issue arises from the underlying
4 bankruptcy case.

5 **IV. GENERAL ALLEGATIONS**

6 10. Plaintiffs re-allege and incorporates by reference
7 paragraphs 1 through 9 as if set forth herein.

8 11. Claim #17, as filed, is not based on a writing.

9 12. Claim #17 has no writing attached to the proof of claim.

10 13. Robert K. Stephenson filed Claim #17.

11 14. Robert K. Stephenson testified at the evidentiary
12 hearing, Docket No. PGM-5, as to Emovations' claims.

13 15. Robert K. Stephenson's claim was based on the estimated
14 value of the stock prior to the stroke of Plaintiff Ralph W.
15 Emerson, and which said stock was never transferred to Plaintiffs.

16 16. Emovations has not provided Plaintiffs with any Stock
17 owned by the corporation.

18 17. The Internal Revenue Service ("I.R.S.") filed a tax lien
19 on October 13, 2009 in accordance with I.R.S. Regulation
20 301.6323(f)-1.

21 18. The I.R.S. lien is for the calendar years 1998, 2000,
22 2001, 2003, and 2004.

23 19. The I.R.S. has filed claim #22, which reflects the tax
24 lien.

25 20. Defendant was Plaintiffs' Certified Public Accountant
26 within the last ten (10) years.

27 21. Defendant did not make/give/transfer or in any manner
28

1 make any payment(s) equaling \$750,000.00 to Plaintiffs.

2 22. Defendant did not loan Plaintiffs \$750,000.00.

3 23. Defendant does not hold a shareholders agreement with the
4 Plaintiffs.

5 24. Defendant has not conducted any Board Meetings.

6 25. Defendant has not filed income taxes for calendar year
7 2010.

8 26. Defendant has not filed income taxes for calendar year
9 2011.

10 27. Defendant has not filed income taxes for calendar year
11 2012.

12 28. Defendant has not provided any shareholders a profit and
13 loss statement for any period since inception of the corporation.

14 **FIRST CAUSE OF ACTION - DECLARATORY RELIEF**

15 29. Plaintiffs re-allege and incorporates by reference
16 paragraphs 10 through 28 as set forth herein.

17 30. Robert K. Stephenson testified that the \$750,000.00 claim
18 was based on his assertion that the value of the "intellectual
19 property" was \$1,500,000.00, and that 50% of this is \$750,000.00.

20 31. Plaintiffs valued the "intellectual property" at
21 \$15,000.00.

22 32. The I.R.S. valued their tax lien at \$25,325.00, claim
23 #22-1.

24 33. The actual claim by Emovations Incorporation is \$0.00.

25 **SECOND CAUSE OF ACTION - INTENTIONAL INFLICTION OF EMOTIONAL**
26 **DISTRESS**

27 34. Plaintiffs incorporate all allegations of this complaint
28

1 and re-allege them as though they were fully set forth herein.

2 35. Defendant's conduct, as alleged above, constitutes
3 intentional infliction of emotional distress.

4 36. Defendant's conduct was outrageous and purposeful.

5 37. Plaintiff never owed a claim to Defendant in the amount
6 of \$750,000.00.

7 38. Defendant's Chief Financial Officer wrongly induced
8 Plaintiffs into not concluding the Offer-to-Compromise with the
9 I.R.S. by failing to notice Plaintiffs of the tax situation
10 pending.

11 39. Defendant has failed to account for income generated
12 since formation of Emovations Incorporated with the intent of
13 harassing Plaintiffs and causing them severe emotional distress.

14 40. Defendant's conduct was outrageous and purposeful.

15 41. Defendant's wrongfully induced Plaintiffs into not
16 demanding an accounting for the corporation.

17 42. Plaintiffs did in fact suffer severe emotional distress
18 in the form of confusion, frustration, fear, anguish, nervousness,
19 helplessness, anxiety, and shock as result of Defendant's conduct.

20 **THIRD CAUSE OF ACTION - FRAUD**

21 43. Plaintiffs incorporate all allegations of this complaint
22 and re-allege them as though they were fully set forth herein.

23 44. Defendant's conduct, as alleged above, constitutes actual
24 misrepresentation of material facts.

25 45. Defendant's conduct and misrepresentation was made with
26 knowledge of the falsity.

27 46. Defendant's act(s) were made with the intent to induce
28

1 reliance on these representations.

2 47. Defendant has wrongly induced Plaintiffs into justifiable
3 reliance.

4 **FOURTH CAUSE OF ACTION - VIOLATION OF BUSINESS AND PROFESSIONS**

5 **CODE SECTION 17200**

6 48. Plaintiffs incorporate all allegations of this complaint
7 and re-allege them as though they were fully set forth herein.

8 49. Defendant's conduct, as alleged above, constitutes
9 unlawful, unfair, and fraudulent business practices, as defined in
10 the California Business and Professions Code, section 17200 et seq.
11 As applied, section 17200 et seq. borrows violations from other
12 statutes and laws.

13 50. Defendant's entire course of dealing with Plaintiffs and
14 this Court was fraudulent and designed to wrongfully defeat the
15 Plaintiffs' Chapter 13 bankruptcy case and plan.

16 51. As a result of Defendant's wrongful conduct, Plaintiffs
17 have suffered various Damages and injuries, including the cost of
18 attempting to confirm the underlying Chapter 13 plan, defending a
19 state and adversary lawsuits, and the filing and costs associated
20 with objecting to this warrantless proof of claim.

21 52. Plaintiffs seek injunctive relief enjoining Defendant from
22 engaging in the unfair business practices described herein and
23 other further relief as the Court may deem just and proper.

24 //

25 //

26 //

27 //

1 **WHEREFORE**, Plaintiffs request that the Court enter judgment in
2 Plaintiffs' favor and against the Defendant for;

- 3 **1. Declaratory Relief;**
4 **2. Intentional Infliction of Emotional Distress**
5 **3. Violation of Business and Professions Code # 17200**
6 **4. Attorney's fees, litigation expenses and cost of suit;**
7 **5. Such other or further relief as the Court deems proper**

8
9 **VERIFICATION**

10 I declare under penalty of perjury that the forgoing statement
11 is true and correct and that this declaration is executed on this
12 6th day of June, 2013 at Sacramento, California.

13 /s/ Peter G. Macaluso
14 Peter G. Macaluso,
15 Attorney for Plaintiffs
16
17
18
19
20
21
22
23
24
25
26
27
28